

**IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF OKLAHOMA**

DALE E. HARPER, )  
vs. )  
Plaintiff, )  
vs. ) Case No. CIV-11-0996-HE  
WOODWARD COUNTY BOARD )  
OF COUNTY COMMISSIONERS, *et al.* )  
Defendants. )

## **ORDER**

Plaintiff Dale E. Harper, a state prisoner appearing *pro se* and *in forma pauperis*, filed this § 1983 action against multiple defendants, alleging violations of his constitutional rights. Most of plaintiff's claims in this lawsuit arise out of actions taken in conjunction with his arrest, detention and prosecution by state officials in Woodward County, Oklahoma. Many of his claims were stayed under the Younger abstention doctrine<sup>1</sup> because they relate to ongoing criminal proceedings. Plaintiff filed a motion to lift the stay and Magistrate Judge Charles B. Goodwin, to whom the matter has been referred consistent with 28 U.S.C. § 636(b), has recommended the court deny plaintiff's motion.

As the magistrate judge noted in his Report and Recommendation,<sup>2</sup> the criminal

<sup>1</sup>*Younger v. Harris*, 401 U.S. 37 (1971)

<sup>2</sup>The magistrate judge, taking judicial notice of publicly available state court records, noted that the docket sheet in plaintiff's state criminal case reflected that his jury trial was set for October 6, 2014. Plaintiff stated in his objection to the Report and Recommendation that the trial was not held on that date and the docket sheet now has an entry indicating that the jury trial is scheduled for 5/13/2015. The docket sheet for State v. Harper, No. CF-2009-00198, District Court of Woodward County (filed June 29, 2009), is publicly available at <http://www1.odcr.com/detail?court=077-&77-&casekey=077-CF++0900198> (accessed December 4, 2014).

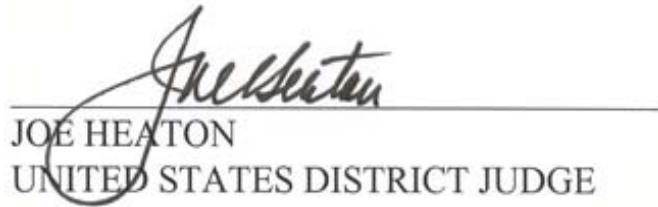
proceedings remain ongoing as of this date. On that basis and because he concluded plaintiff had not met the heavy burden of proof imposed on a person seeking to overcome Younger absence, the magistrate judge recommended that plaintiff's motion be denied.

Plaintiff's objection to the Report and Recommendation is essentially a document production request. He does nothing more than describe the evidence which he appears to believe, once produced, will demonstrate that he is being prosecuted in bad faith. Plaintiff has not met his heavy burden to overcome the bar of Younger abstention. The court is still satisfied that abstention is justified.

Accordingly, the court adopts Magistrate Judge Goodwin's Report and Recommendation and denies plaintiff's motion to lift the stay [Doc. #206].

**IT IS SO ORDERED.**

Dated this 29th day of December, 2014.



JOE HEATON  
UNITED STATES DISTRICT JUDGE